



# Commonwealth of Kentucky

## CONTRACT

**IMPORTANT**

Show Doc ID number on all packages, invoices and correspondence.

**Doc Description:** Contingency Fee Legal Svcs - Prescription Opioid Products

**Doc ID No:** PON2 040 1800000868 1

**Procurement Folder:** 4560225

**Procurement Type:** Personal Service Contract

**Record Date:** 12/21/2017

**Issued By:** Fran Pinkston

**Cited Authority:** FAP111-43-00-L

**Telephone:** 502-696-5609

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Morgan & Morgan Kentucky PLLC

333 West Vine Street

Suite 1200

Lexington

KY 40383

US

**Effective From:** 12/22/2017

**Effective To:** 06/30/2018

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Legal Services - Prescription Opioid Products Matt	2017-12-22	0.00		0.00000	1.00	1.00

### Extended Description

The Office of the Attorney General ("OAG"), on behalf of the Commonwealth of Kentucky, enters this contract for legal services to assist with the continuing investigation and litigation regarding potential violations of state consumer protection, Medicaid, antitrust and/or other statutes in the manufacturing, distribution and/or dispensing of prescription opioid products within the Commonwealth including but not limited to McKesson Corporation and potentially other entities and individuals. The contract includes, but is not limited to, assistance related to the OAG's investigation identifying the responsible parties and/or entities.

This contract may be extended, at the option of the OAG, to include other claims for violations of the Commonwealth's statutes, as well as additional common law and/or statutory causes of action. The contract shall be renewed for unlimited 2 year terms for the duration of the action.

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Administrative Services

OFFICE OF THE ATTORNEY GENERAL

700 CAPITAL AVENUE

ROOM 34, CAPITAL BUILDING

FRANKFORT

KY 40601

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OFFICE OF THE ATTORNEY GENERAL

700 CAPITAL AVENUE

ROOM 34, CAPITAL BUILDING

FRANKFORT

KY 40601

US

**Total Order Amount:**

1.00

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**PERSONAL SERVICE CONTRACT FOR  
PRESCRIPTION OPIOID PRODUCTS LITIGATION**

**BETWEEN**

**THE COMMONWEALTH OF KENTUCKY**

**OFFICE OF THE ATTORNEY GENERAL**

**AND**

**MORGAN & MORGAN PLLC  
Suite 1200, 333 West Vine Street  
Lexington, KY 40507**

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Office of the Attorney General ("the Commonwealth" or "OAG") and Morgan & Morgan, PLLC, ("the Contractor") to establish a contract for Prescription Opioid Products Litigation. The initial PSC is effective upon approval of the Finance and Administration Cabinet through June 30, 2018.

This contract is issued pursuant to RFP 040 1700000335.

Per the solicitation, This Contract may be renewed at the discretion of the agency for as many additional two year terms as needed for the purpose of and to the extent that said renewals are necessary to permit the Contractor to conclude any work on any cases in progress pursuant to the RFP.

Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or this authorized designee, and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705.

The Commonwealth and Contractor agree to the following:

**I. Scope of Contract**

**The OAG at all times will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be made in said litigation, approval and/or rejection of settlements and the amount and type of damages to be requested.**

Legal services include, but are not limited to:

Performing an assessment of the Kentucky OAG's potential claims against McKesson Corporation, its subsidiaries, partners, contractors, subcontractors, and/or any other entities or individuals regarding manufacturing, distribution and/or dispensing of prescription opioid products within the Commonwealth of Kentucky.

Continuing investigation and litigation against potentially responsible parties. Contractor shall assist in all

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phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to motions, including motions to dismiss; drafting and answering discovery propounded upon the Commonwealth or any of its agencies; tracking documents obtained in discovery; coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions; defending depositions noticed by the defendants; preparing relevant witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the Commonwealth of Kentucky or other state agencies; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; representing the Commonwealth of Kentucky in trial or in any settlement negotiations that may occur; representing the Commonwealth of Kentucky in responding to post-trial motions; representing the Commonwealth of Kentucky in the appeal(s) of any judgment or verdict rendered in any such action(s) and, if applicable, the remand from appeal(s).

Preserve and making available to the Office all pertinent records. When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to the Office for a period of at least eight (8 ) years from the date of final statement or until the litigation is completed, whichever occurs last.

Warrant that any representations made by them in the proposed agreement are true and accurate; that the Contractor is in all ways in compliance with state and federal laws which may govern the subject matter of this Agreement; and that the party executing this Agreement on the Contractor's behalf is duly authorized to do so.

Contractor shall not have any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

Contractor and all attorneys working for or at the direction of vendor on this matter shall be in good standing with the Kentucky Bar Association or another bar association in the United States and shall maintain good standing throughout the pendency of performing the services hereunder.

Contractor and all people working for or at the direction of vendor on this matter shall conduct themselves with the utmost of professionalism related to this matter through the pendency of performing the services hereunder.

Contractor shall use software compatible with software used by OAG, including Microsoft Office, Adobe Acrobat Pro, and other case management and document management software necessary to perform the services hereunder. Vendor shall make available, through licenses or otherwise, case management or document management software to employees of the OAG assigned to this matter. Vendor shall provide appropriate training and support related to the case management or document management software to employees of the OAG assigned to this matter.

Contractor shall provide detailed information regarding hours worked, services performed and costs incurred in said litigation on a quarterly basis and upon request.

## **II. Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid contract between the Parties consisting of the following:

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- >This written agreement and any subsequent written amendments to this agreement;
- >Any addenda to the Solicitation;
- >The Solicitation and all attachments thereto; including PSC Standard Terms and Conditions;
- >Any Best and Final Offer;
- >Any clarifications concerning the Contractor's proposal in response to the Solicitation;
- >The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

### III. Negotiated Items

Not applicable.

### IV. Pricing

**Contingency Fee Basis** - Contractor agrees to advance litigation costs incurred by their own attorneys and staff, including but not limited to travel, meals, mileage, lodging, photocopying, postage, electronic legal research fees, etc. Additionally Offeror agrees to advance costs of any, and all, expert witnesses, consultants, translation services, etc., as may be necessary in furtherance of this case. Contractor will consult with the OAG before employing any expert witnesses, consultants or translators. The OAG shall have the final approval of the retention of any expert witnesses or consultants and any fee arrangements paid to those individuals.

Fees will be paid based upon the following scale percentage of the total monetary recovery for the Commonwealth:

Twenty percent (20%) of the amount recovered for the first Ten Million Dollars (\$10,000,000); plus

Fifteen percent (15%) of the amount recovered for any amount between Ten Million One Dollars (\$10,000,001) and Fifteen Million Dollars (\$15,000,000); plus

Ten percent (10%) of the amount recovered for any amount between Fifteen Million One Dollars (\$15,000,001) and Twenty Million Dollars (\$20,000,000); plus

Five percent (5%) of the amount recovered for any amount for any amount in excess of Twenty Million Dollars (\$20,000,000).

In addition, the actual costs and expenses in connection with the representation of the Commonwealth including reasonable travel, expert witness fees, court reporters and transcript costs, filing fees, and other reasonable costs and expenses as approved by the OAG shall be paid from the gross recovery.

The OAG shall not approve of or enter into any settlement unless the terms of such settlement require the total monetary recovery be paid directly to the Commonwealth and deposited in the State Treasury in compliance with KRS 48.005(3). Prior to accepting a monetary recovery on behalf of the Commonwealth, Contractor shall advise the Court of the statutory requirements of KRS 48.005(3) mandating that the total monetary recovery be paid directly to the Commonwealth and deposited in the State Treasury. Contractor agrees any fees and expenses owed under this Agreement shall be administered and disbursed by the Office of the Controller after the total monetary recovery has been deposited with the State Treasury.

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## **V. Invoicing**

The contractor shall provide gross monetary recovery for deposit to the Commonwealth State Treasurer per KRS 48.005(3). At the conclusion of all actions and upon award or settlement and appeals of the matter, the contractor shall provide an invoice to the OAG for actual costs and expenses, travel performed in pursuit of Commonwealth recovery, expert witness fees, court reporters and transcript costs, filing fees and other approved reasonable costs and expenses.

The Finance and Administration Cabinet, Office of the Controller will remit payment to the contractor upon approval of the invoice by the Secretary of the Finance and Administration Cabinet per 48.005(4).

## **VI. Personal Service Contract Standard Terms and Conditions**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and **Whereas**, the second party, the Contractor, is available and qualified to perform such function; and **Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

### **Effective Date:**

This contract is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC"). However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

### **Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

### **LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

### **Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this contract shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

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**Cancellation:**

The state agency shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

**Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

**Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

**Authorized to do Business in Kentucky:**

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

**Registration with the Secretary of State by a Foreign Entity:**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

**Invoices for fees:**

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section V of this contract.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

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\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**Travel expenses, if authorized:**

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this contract or authorized in advance and in writing by the Commonwealth. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

**Other expenses, if authorized herein:**

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract or authorized in advance and in writing by the Commonwealth.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

**Purchasing and specifications:**

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

**Conflict-of-interest laws and principles:**

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**Campaign finance:**

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Access to Records:**

The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received

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during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

**Protest:**

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective vendors in connection with the solicitation or selection for award of a or contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and, in any event, within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**William M. Landrum III, Secretary**

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**Social security: (check one)**

\_\_\_\_\_ The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ The parties are cognizant that the state is liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.



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KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

☐ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

☐ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

#### **Discrimination:**

This section applies only to contracts disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of

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September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

**7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.**

## VI. Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

### Office of the Attorney General:

_____ Signature	_____ Title
_____ Printed Name	_____ Date
 <b>Morgan &amp; Morgan PLLC:</b>	
_____ Signature	_____ Managing Partner, Kentucky - Attorney Title
_____ Jonathan Rabinowitz Printed Name	_____ Date

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**Approved as to form and legality:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Assistant Attorney General

Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date